

SEP 23 2014

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
DICKSON LEE,
Defendant.

NO. CR14-024RAJ

16 The United States of America, by and through Jenny A. Durkan, United States
17 Attorney for the Western District of Washington, and Katheryn Kim Frierson, Assistant
18 United States Attorney for said District, Dickson Lee, and his attorney, Russell Aoki,
19 enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure
20 11(c):

21 1. **Waiver of Indictment.** Defendant, having been advised of the right to be
22 charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge
23 brought by the United States Attorney in a Superseding Information.

24 2. **The Charges.** Defendant, having been advised of the right to have this
25 matter tried before a jury, agrees to waive that right and enters pleas of guilty to two
26 counts of Securities Fraud, as charged in Count 1 and Count 2, both in violation of Title
27 18, United States Code, Section 1348.

1 By entering these pleas of guilty, Defendant hereby waives all objections to the
 2 form of the charging document. Defendant further understands that before entering his
 3 guilty pleas, he will be placed under oath. Any statement given by Defendant under oath
 4 may be used by the United States in a prosecution for perjury or false statement.

5 **3. Elements of the Offense.** The elements of the offense of Securities Fraud,
 6 as charged in both Count 1 and Count 2, in violation of Title 18, United States Code,
 7 Section 1348, are as follows:

8 First, the defendant knowingly executed a scheme or plan to defraud or a
 9 scheme or plan for obtaining money or property by means of false or fraudulent
 10 pretenses, representations, or promises;

11 Second, the scheme or plan to defraud or to obtain money or property was
 12 in connection with a security of a publicly traded company, specifically L&L Energy,
 13 Inc.;

14 Third, the statements made or facts omitted as part of the scheme or plan
 15 were material; and

16 Fourth, the defendant acted with the intent to defraud.

17 **4. The Penalties.** Defendant understands that the statutory penalties
 18 applicable to the offense of Securities Fraud, as charged in Count 1 and Count 2, are as
 19 follows: For each count, a maximum term of imprisonment of up to 25 years, a fine of up
 20 to \$250,000, a period of supervision following release from prison of up to 5 years, and a
 21 mandatory special assessment of \$100 dollars. If a probationary sentence is imposed, the
 22 probation period can be for up to five (5) years. Defendant agrees that the special
 23 assessment shall be paid at or before the time of sentencing.

24 Defendant understands that supervised release is a period of time following
 25 imprisonment during which he will be subject to certain restrictive conditions and
 26 requirements. Defendant further understands that if supervised release is imposed and he
 27 violates one or more of the conditions or requirements, Defendant could be returned to
 28 prison for all or part of the term of supervised release that was originally imposed. This

1 could result in Defendant's serving a total term of imprisonment greater than the statutory
2 maximum stated above.

3 Defendant further understands that a consequence of pleading guilty may
4 include the forfeiture of certain property either as a part of the sentence imposed by the
5 Court, or as a result of civil judicial or administrative process.

6 Defendant agrees that any monetary penalty the Court imposes, including
7 the special assessment, fine, costs, or restitution, is due and payable immediately and
8 further agrees to submit a completed Financial Statement of Debtor form as requested by
9 the United States Attorney's Office.

10 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
11 pleading guilty, he knowingly and voluntarily waives the following rights:

- 12 a. The right to plead not guilty and to persist in a plea of not guilty;
- 13 b. The right to a speedy and public trial before a jury of his peers;
- 14 c. The right to the effective assistance of counsel at trial, including, if
15 Defendant could not afford an attorney, the right to have the Court
16 appoint one for him;
- 17 d. The right to be presumed innocent until guilt has been established
18 beyond a reasonable doubt at trial;
- 19 e. The right to confront and cross-examine witnesses against Defendant
20 at trial;
- 21 f. The right to compel or subpoena witnesses to appear on his behalf at
22 trial;
- 23 g. The right to testify or to remain silent at trial, at which trial such
24 silence could not be used against Defendant; and
- 25 h. The right to appeal a finding of guilt or any pretrial rulings.

26 **6. Ultimate Sentence.** Defendant acknowledges that no one has promised or
27 guaranteed what sentence the Court will impose.

1 7. **Statement of Facts.** The parties agree on the following facts. Defendant
 2 admits he is guilty of the charged offenses:

3 a. At all times relevant to the charged offenses, L&L Energy, Inc.
 4 (hereinafter, “L&L”) was a public reporting company subject to the United States
 5 Securities and Exchange Commission’s (the “SEC”) periodic filing requirements
 6 pursuant to a registration under Section 12 of the Securities Exchange Act of 1934. L&L
 7 shares were also publicly traded. In 2008, L&L’s stock was quoted on the Over-the-
 8 Counter Bulletin Board (“OTCBB”). L&L decided to upgrade its trading status to a
 9 national stock exchange. In February 2010, L&L commenced trading on the NASDAQ
 10 under the ticker symbol “LLEN.” L&L maintained its U.S. headquarters in Tukwila,
 11 Washington.

12 b. DICKSON LEE was the Chief Executive Officer (“CEO”) of L&L.
 13 LEE has held the office of CEO for most of L&L’s history. In July 2007, LEE
 14 voluntarily resigned the title of CEO, but in truth retained day to day control over the
 15 company. In August 2008, LEE formally reassumed the title of CEO.

16 c. Count 1: Beginning sometime in 2008, LEE sought to have L&L
 17 stock qualify for listing on a national exchange, such as the NASDAQ. In order to do so,
 18 LEE was aware that L&L had to maintain compliance with SEC reporting requirements,
 19 including providing with each annual and quarterly report certifications by the CEO and
 20 the Chief Financial Officer (“CFO”) that, among other things, attested to the accuracy of
 21 the reports and assured the public that any fraud involving management have been
 22 disclosed. These certifications are known as Section 302 and Section 906 Certifications.

23 d. Sometime in May or June 2008, after the resignation of L&L’s
 24 previous CFO, N.L., a Hong Kong resident and a prior employee of L&L, was offered the
 25 position of interim CFO. In July 2008, N.L. declined to accept the job. Thereafter, N.L.
 26 did no work for L&L in any capacity.

27 e. After July 2008, however, LEE continued to make and caused to be
 28 made false representations that N.L. was L&L’s acting CFO. In furtherance of the

1 scheme, LEE submitted and caused to be submitted to the SEC from L&L's Tukwila
 2 office the following L&L annual and quarterly reports containing false and fraudulent
 3 representations about N.L. and her work as CFO, including false CFO Section 302 and
 4 906 Certifications that were purportedly signed by N.L., when, in fact, N.L. had no
 5 involvement with the annual and quarterly filings in any capacity and had not signed any
 6 Section 302 or 906 Certifications:

Date of Filing	Submission
Aug 14, 2008	L&L Annual Report (Form 10-K) for fiscal year ended April 30, 2008
Sept 15, 2008	L&L Quarterly Report (Form 10-Q) for quarter ended July 31, 2008
Dec 22, 2008	L&L Quarterly Report (Form 10-Q) for quarter ended October 31, 2008
March 23, 2009	L&L Quarterly Report (Form 10-Q) for quarter ended January 31, 2009

17 f. In about May 2009, N.L. discovered that L&L had submitted false
 18 annual and quarterly reports with the SEC regarding her role. N.L. contacted LEE and
 19 threatened to report her findings to the SEC. On about July 30, 2009, LEE entered into a
 20 settlement agreement with N.L. whereby in exchange for her silence regarding the false
 21 filings, L&L agreed to pay her money and stock owed to her by the company for past
 22 work.

23 g. Shortly after signing the agreement, LEE caused the filing of L&L's
 24 annual report for the fiscal year ended April 30, 2009, in which the company failed to
 25 disclose the truth about N.L., failed to disclose the existence of the settlement agreement
 26 with N.L., and furthermore, included a certification by LEE in which he falsely certified
 27 that he had disclosed all fraud involving management.

h. Finally, in September 2009, L&L submitted its application for listing on the NASDAQ. As part of the application process, NASDAQ requested that L&L confirm in writing that the company was in compliance with all SEC reporting requirements, including the submission of all section 302 and 906 certifications. On approximately November 19, 2009, LEE responded in writing and falsely assured NASDAQ that the company was in compliance. As a result, in February 2010, L&L was accepted for listing and debuted on the NASDAQ.

i. On March 13th and 14th of 2013, LEE was deposed, under oath, by attorneys from the SEC in connection with an investigation into L&L's financial reporting. During the deposition, LEE was asked whether N.L. indeed performed duties of CFO for L&L during the years 2008 and 2009. LEE knowingly and falsely testified that N.L. did perform the duties of a CFO for L&L during 2008 and 2009.

j. **Count 2:** Beginning sometime in early 2011, L&L was in need of cash for acquisition costs and company operations. DICKSON LEE explored the possibility of raising the cash by simply selling on the market L&L's own Treasury shares as well as his personal shares. On or about May 18, 2011, however, L&L was served with a subpoena from the SEC seeking records relating to the Commission's investigation of L&L and its financial reporting. Subsequently, LEE was advised that neither he nor the company could sell shares to investors without first disclosing to the public the fact that L&L had received an SEC subpoena and was subject to an SEC investigation.

k. L&L, however, chose not to disclose publicly the existence of the subpoena. Instead, LEE, thereafter, devised a scheme and artifice to defraud by issuing and selling L&L stock while at the same time evading the need for disclosure. Specifically, LEE directed a trusted L&L employee, C.T., to recruit a number of China-based individuals who would be willing to receive L&L shares in their names for the sole purpose of selling those shares and generating cash for L&L.

1 1. Once C.T. located such individuals, LEE authorized and caused
 2 L&L to issue brand-new shares or transfer existing L&L Treasury stock to them. When
 3 these third-parties received the shares, they sold them pursuant to C.T.'s instructions on
 4 the exchange through brokerage accounts opened in their names and returned the
 5 proceeds to L&L to be used for operational expenses, including executive salaries. At no
 6 point during the period of time when these third parties were selling L&L shares did LEE
 7 or L&L disclose the existence of the SEC subpoena and investigation to the investing
 8 public. Nor did LEE or L&L disclose the fact that LEE had ultimately directed these
 9 sales.

10 m. The evidence shows that in just the period beginning May 2011 and
 11 continuing through March 2012, LEE authorized and caused the fraudulent transfer and
 12 issuance of approximately 730,000, L&L shares to third parties for the sole purpose of
 13 selling them on the market to generate proceeds for the cash-strapped company. In
 14 furtherance of the scheme and in order to execute the scheme, LEE furthermore caused
 15 false and fraudulent records to be created on L&L's books, accounts and records
 16 regarding the reasons for these share issues or transfers in order to deceive others as to
 17 the true reason for these transactions. Specifically, approximately 730,000 L&L shares
 18 issued or transferred to the third parties during L&L's fiscal year ended April 2012, were
 19 falsely and fraudulently recorded in L&L books and accounts as having been issued or
 20 transferred as compensation for services or in return for private placement investments,
 21 whereas, as LEE knew or should have known, none of the individuals who received these
 22 shares provided any services or paid any money in return for the shares.

23 8. **United States Sentencing Guidelines.** Defendant understands and
 24 acknowledges that the Court must consider the sentencing range calculated under the
 25 United States Sentencing Guidelines and possible departures under the Sentencing
 26 Guidelines together with the other factors set forth in Title 18, United States Code,
 27 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
 28 history and characteristics of the defendant; (3) the need for the sentence to reflect the

1 seriousness of the offense, to promote respect for the law, and to provide just punishment
2 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
3 conduct; (5) the need for the sentence to protect the public from further crimes of the
4 defendant; (6) the need to provide the defendant with educational and vocational training,
5 medical care, or other correctional treatment in the most effective manner; (7) the kinds
6 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
7 avoid unwarranted sentence disparity among defendants involved in similar conduct who
8 have similar records. Accordingly, Defendant understands and acknowledges that:

9 a. The Court will determine applicable Defendant's Sentencing

10 Guidelines range at the time of sentencing;

11 b. After consideration of the Sentencing Guidelines and the factors in

12 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
13 maximum term authorized by law;

14 c. The Court is not bound by any recommendation regarding the
15 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
16 range offered by the parties or the United States Probation Department, or by any
17 stipulations or agreements between the parties in this Plea Agreement; and

18 d. Defendant may not withdraw his guilty plea solely because of the
19 sentence imposed by the Court.

20 9. **Sentencing Factors.** The parties agree that the following Sentencing

21 Guidelines calculation applies in this case:

22 a. The base offense level is 7 pursuant to USSG § 2B1.1(a)(1);

23 b. Pursuant to USSG § 2B1.1(b)(1)(A), because determining the actual
24 amount of loss is too complex and impractical given the facts, the parties agree and
25 stipulate solely for purposes of calculating the Sentencing Guidelines that no additional
26 upward adjustment is warranted for loss;

27 c. Pursuant to USSG § 2B1.1(b)(2)(c), the base offense level is

28 increased by 6 levels because the offenses involved more than 250 shareholder victims;

d. Pursuant to USSG § 2B1.1(b)(10), the base offense level is further increased by 2 levels because the offenses involved sophisticated means;

e. Pursuant to USSG § 2B1.1(b)(19)(A), the base offense level is further increased by 4 levels because the offenses involved violations of securities laws and, at the time of the offense, the defendant was an officer of a publicly traded company;

f. Pursuant to USSG § 3B1.1(a), the base offense level is further increased by 4 levels because the defendant was an organizer of criminal activity and it was extensive; and

g. Pursuant to USSG § 3C1.1, the base offense level is further increased by 2 levels because the defendant obstructed the administration of justice by falsely testifying at a deposition conducted by the United States Securities and Exchange Commission.

The United States agrees and stipulates that no other Sentencing Guidelines enhancements apply in this case. Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

10. **Acceptance of Responsibility.** At sentencing, if the district court concludes Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the district court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United States by timely notifying the United States of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

11. No Agreement as to Sentencing Recommendation. Defendant understands that although the parties are in agreement as to the applicable Sentencing Guidelines range calculation, the parties are free to recommend any sentence and are not

1 bound by the agreed upon Sentencing Guidelines range. In particular, the Defendant
 2 understands that the United States expects to ask for a sentence above the agreed upon
 3 Sentencing Guidelines range based, in part, on the fact that in this case, the Sentencing
 4 Guidelines do not adequately reflect the severity of the offense as measured by monetary
 5 loss. Defendant understands, furthermore, that at the time of sentencing, the Court is free
 6 to reject the recommendation of the parties and is free to sentence in accordance with the
 7 law, including up to the maximum afforded by statute.

8 12. **Restitution.** The parties agree and the United States will recommend that
 9 restitution is not applicable in this case because determining complex issues of fact
 10 related to identifying particular victims and the amount of those victims' losses would
 11 complicate or prolong the sentencing process to a degree that the need to provide
 12 restitution to any victim is outweighed by the burden on the sentencing process.

13 13. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 14 the United States Attorney's Office for the Western District of Washington agrees not to
 15 prosecute Defendant for any additional offenses known to it as of the time of this
 16 Agreement that are based upon evidence in its possession at this time, and that arise out
 17 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
 18 United States has agreed not to prosecute all of the criminal charges the evidence
 19 establishes were committed by Defendant solely because of the promises made by
 20 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
 21 the Presentence Report, the United States Attorney's Office will provide the United
 22 States Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
 24 sentencing were substantially justified in light of the evidence available to the United
 25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 26 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
 27 (1997).

1 14. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
 2 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 3 Agreement and Defendant may be prosecuted for all offenses for which the United States
 4 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 5 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 6 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
 7 Defendant has waived any objection to the re-institution of any charges in the Indictment
 8 that were previously dismissed or any additional charges that had not been prosecuted.

9 Defendant further understands that if, after the date of this Agreement,
 10 Defendant should engage in illegal conduct, or conduct that violates any conditions of
 11 release or the conditions of his confinement, (examples of which include, but are not
 12 limited to, obstruction of justice, failure to appear for a court proceeding, criminal
 13 conduct while pending sentencing, and false statements to law enforcement agents, the
 14 Pretrial Services Officer, Probation Officer, or Court), the United States is free under this
 15 Agreement to file additional charges against Defendant or to seek a sentence that takes
 16 such conduct into consideration by requesting the Court to apply additional adjustments
 17 or enhancements in its Sentencing Guidelines calculations in order to increase the
 18 applicable advisory Guidelines range, and/or by seeking an upward departure or variance
 19 from the calculated advisory Guidelines range. Under these circumstances, the United
 20 States is free to seek such adjustments, enhancements, departures, and/or variances even
 21 if otherwise precluded by the terms of the plea agreement.

22 15. **Waiver of Appeal.** In addition to the right to appeal any pretrial rulings
 23 which are waived by a plea of guilty, as part of this Plea Agreement and on the condition
 24 that the Court imposes a custodial sentence that is no greater than 60 months, or is
 25 otherwise within or below the Sentencing Guidelines range that is determined by the
 26 Court at the time of sentencing, Defendant waives to the full extent of the law:

27 a. Any right conferred by Title 18, United States Code, Section 3742 to
 28 appeal the sentence, including any restitution order imposed; and

1 b. Any right to bring a collateral attack against the conviction and
2 sentence, including any restitution order imposed, except as it may relate to the
3 effectiveness of legal representation.

4 This waiver, however, does not preclude Defendant from bringing an
5 appropriate motion pursuant to 28 U.S.C. 2241, to address the conditions of his
6 confinement or the decisions of the Bureau of Prisons regarding the execution of his
7 sentence.

8 If Defendant breaches this Plea Agreement at any time by appealing or
9 collaterally attacking (except as to effectiveness of legal representation) the conviction or
10 sentence in any way, the United States may prosecute Defendant for any counts,
11 including those with mandatory minimum sentences, that were dismissed or not charged
12 pursuant to this Plea Agreement.

13 16. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
14 Agreement freely and voluntarily and that no threats or promises, other than the promises
15 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
16 guilty.

17 17. **Statute of Limitations.** In the event this Agreement is not accepted by the
18 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
19 the statute of limitations shall be deemed to have been tolled from the date of the Plea
20 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
21 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
22 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

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18. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 23 day of September, 2014.

DICKSON LEE
Defendant

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RUSSELL AOKI

Attorney for Defendant

Primary and secondary

KATHRYN KIM FRIERSON
Assistant United States Attorney